

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD EVANS,

Plaintiff,

v.

R. MILAN, ET. AL.,

Defendants.

Case No. 1:20-cv-70-AWI-HBK

ORDER DENYING PLAINTIFF'S MOTION
TO DISMISS SCREENING (1915)

(Doc. No. 129)

Pending before the Court is Plaintiff's "motion to dismiss screening (1915), granting amended complaint of 8/12/20," filed July 22, 2021. (Doc. No. 129, "Motion"). In summary, Plaintiff requests that the Court not do its § 1915 screening order on his amended complaint, filed August 12, 2020 and to let the case proceed. (*Id.* at 3). Plaintiff's Motion is denied. Screening under § 1915 is required by statute and cannot be waived.

A review of the docket confirms that the former Magistrate Judge issued a screening order on Plaintiff's initial complaint. (Doc. No. 15). In response to the screening order, Plaintiff filed a first amended complaint on August 24, 2020. (Doc. No. 34). Thereafter, Plaintiff filed a second amended complaint, which is "lodged," but was not filed by the Clerk. (Doc. No. 42). Plaintiff did not accompany his second amended complaint with a motion for leave to amend. Plaintiff does not reference the second amended complaint in the instant motion. (*See generally* Doc. No. 129).

1 Fed. R. Civ. P. 15 permits a plaintiff to file a first amended complaint as a matter of right.
2 Thereafter, any other amended complaints require either the opposing parties' consent, or plaintiff
3 must seek leave from the Court. Because Plaintiff did not seek leave to file the second amended
4 complaint, the Court directs the Clerk to strike Plaintiff's "lodged" second amended complaint to
5 avoid any confusion regarding the operative complaint in this case. The Court will conduct the
6 required § 1915 review of Plaintiff's first amended complaint in due course.

7 Accordingly, it is **ORDERED**:

- 8 1. Plaintiff's motion to dismiss screening (Doc. No. 129) is DENIED.
9 2. The Clerk of Court shall strike Plaintiff's lodged second amended complaint. (Doc.
10 No. 42). The Court deems Plaintiff's amended complaint (Doc. No. 34) the operative complaint
11 for screening under 28 U.S.C. § 1915A.

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13 Dated: July 23, 2021


14 HELENA M. BARCH-KUCHTA
15 UNITED STATES MAGISTRATE JUDGE
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